

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

AT BECKLEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:18-cr-00155

CHERYL J. MCGRATH,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is Defendant Cheryl J. McGrath's *pro se* Emergency Release Motion ("motion for compassionate release"), filed April 1, 2020. [Doc. 64].

On April 2, 2020, a Standing Order was entered appointing the Office of the Federal Public Defender to determine whether Ms. McGrath qualified to seek a reduced sentence pursuant to Section 404 of the First Step Act ("the Act"). [Doc. 65]. The Office of the Federal Public Defender submitted its memorandum on April 16, 2020, concluding that Ms. McGrath was ineligible to receive a reduced sentence under Section 404 of the Act. [Doc. 66]. Ms. McGrath's motion, however, is more accurately interpreted as seeking compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A).

Prior to the Act, "only the Director of the Bureau of Prisons could file a motion with the court seeking compassionate release for an inmate." *United States v. Brewington*, 2019 WL 3317972, at *1 (W.D. Va. July 24, 2019). The Act, however, amended 18 U.S.C. § 3582(c) to permit a sentencing court, after consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a), to "modify a sentence to grant compassionate release either upon motion of the Director

‘or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such request by the warden of the defendant’s facility.’’ *Id.* (quoting 18 U.S.C. § 3582(c)(1)(A)).

Upon review of Ms. McGrath’s motion, there is no indication that she has exhausted her administrative remedies as required by the Act. Accordingly, the Court **DENIES** Ms. McGrath’s motion for compassionate release [**Doc. 64**].

The Court directs the Clerk to send of copy of this memorandum opinion and order to the Defendant, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTERED: April 24, 2020



Frank W. Volk
United States District Judge